

REMARKS

Claims 1-3, 5-8, 10-13, 29-32, 45-48, and 50-72 are pending in the application. The numbered paragraphs below correspond to the Examiner's numbered paragraphs:

1./2. Claims 1-8, 10-13, 29-32 and 45-72 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner has submitted that the claims are non-enabling followed by stating that the description of "a stent body or a radially expandable stent body" does not correspond to election of Group 1, species 3 of figure 6.

Applicant respectfully submits that the issue presented by the Examiner is not fully understood by the Applicant. Applicant fails to see how 35 U.S.C. § 112, first paragraph, based on enablement relates to an objection that the claim falls outside of the scope of what was originally elected. Regardless, Applicant will attempt to address each issue individually. With respect to the non-enablement rejection, Applicant directs the Examiner's attention to page 6, the paragraph starting on line 7 and the paragraph starting on line 14 for an example of a description of a stent. The specification provides that "stent 10 can have a tubular **body structure 12**" and can be "**radially expandable**." Line 14 provides one example of what the body structure can include, such as, for example, struts 22 and connecting elements 24. An example of a stent is illustrated by figure 1. Another example of a stent is illustrated by figure 2. An example of what the struts may look like is illustrated by figure 3. In fact, figure 3 illustrate the depots 30 on the struts – this being the amendment made to claim 1. Considering that stents were well known prior to the filing date of this application and considering the figures and description in the specification, Applicant respectfully fails to see how a claim to a stent body can be non-enabling.

With respect to the second issue of the claim falling outside the scope of what was

elected, the restriction requirement was between four groups: Group I, claim 1-13; Group II, claims 14-26; Group III, claim 27; and Group IV, claim 28. Additionally, 5 species were provided between figures 4, 5, 6, 7, and 8. Applicant elected Group I, species of figure 6. Figure 6 illustrated a stent having a depot. **Nothing that has been claimed falls outside this scope.**

Applicant assumes that since the Examiner is reviewing this application, the Examiner is familiar with stent technology. As the Examiner is well aware, stents can be radially expandable (see specification, lines 14-19). The restriction requirement was never based on self-expandable stents versus balloon expandable stents versus stent grafts versus other forms of stents. Again, the species was limited to the different ways that the material can be carried by a stent. Considering it is well known that stents can have a radially expandable body and considering that this has been described in the specification, Applicant respectfully fails to fully understand that to which the Examiner is contending. Removal of the rejection is respectfully requested.

3. Claims 1-8, 11-13, 45, 47-50 and 54-60 have been rejected under 35 U.S.C. § 102(e) as being anticipated by ten Cate (U.S. Patent No. 6,352,383). Applicant respectfully submits that ten Cate fails to teach,

“a stent body **having depots on a surface of the stent body**, the stent body carrying: a first material including a therapeutic substance; and a second material configured to convert a first type of energy received by the second material from an energy source positioned external to the body vessel to a second type of energy, wherein the first type of energy is non-cytotoxic electromagnetic waves and the second type of energy promotes release of the therapeutic substance from the first material, **wherein the second material is disposed in the depots of the stent body.**”

There is absolutely nothing in ten Cate that suggests that the material that reflects, absorbs or emits electromagnetic waves is in a depot of a stent. In fact, Applicant submits that the teaching of ten Cate is even questionable with respect to a stent carrying all that has been claimed. ten Cate merely teaches that administration can be via a catheter, examples of which include a stent delivery type catheter (col. 6, lines 5-11). Applicant respectfully submits that the Examiner has stretched this language to be interpreted that the stent is in fact carrying the material. **There is no teaching in ten Cate of how the stent can carry this material, as oppose to its teaching of how a catheter can carry the material.** Accordingly, ten Cate is not enabling with respect to how the stent can carry all that has been claimed. Regardless, ten Cate fails to disclose that its energy conversion material is disposed in depots of a stent. Claim 1 is therefore patentably allowable over the cited reference. Claims 2-3, 5-8, and 11-13 depend from claim 1 and are allowable for at least the same reason.

With respect to claim 45, again, ten Cate fails to teach “a second material configured to convert non-cytotoxic electromagnetic waves received by the second material to a first type of energy, wherein the first type of energy promotes the release of the therapeutic substance from the first material, **wherein the stent body includes cavities and wherein the second material is deposited in the cavities of the stent body.**” There is absolutely no suggestion in ten Cate that the material that reflects, absorbs or emits electromagnetic waves should, or even could, be disposed in cavities of a stent. Accordingly, claim 45 is allowable. Claims 47, 48, 50, and 54-60 depend from claim 45 and are allowable for at least the same reason.

4. Claims 29, 30, 51, 52, and 53 have been rejection under 35 U.S.C. § 103(a) as being obvious over ten Cate. Claims 29 and 30 depend from claim 1 and are allowable for at least the

same reason. Claims 51, 52 and 53 depend from claim 45 and are allowable for at least the same reason.

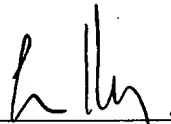
Removal of all rejections is respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims have been placed in condition for allowance. Applicant respectfully requests the Examiner to enter the foregoing amendments and pass the case to issue.

If the Examiner has any questions or concerns, the Examiner is invited to telephone the undersigned attorney at (415) 954-0345.

Respectfully submitted,



Cameron Kerrigan
Attorney for Applicant
Reg. No. 44,826

Date: November 18, 2005

Squire, Sanders & Dempsey L.L.P.
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Telephone (415) 954-0200
Facsimile (415) 393-9887